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Notice of Allowability

Application No.

09/971,135

Examiner

Jack A. Lane

Applicant(s)

RUSSELL, LANCE W.

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 08/16/2005 and the tel. interview with Mr. Edouard Garcia on 09/12/05.

2. ☒ The allowed claim(s) is/are 12-14 renumbered as 1-3.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 08/16/2005

4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 09/13/2005.

7. ☒ Examiner's Amendment/Comment

8. ☐ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel claims 1-11 and 15-26.

2. Newly amended claims 1-11 and 15-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-11 and 15-26, drawn to a system providing/routing kernel/network infrastructure services to network devices, classified in class 717, subclass 176.
- II. Claims 12-14, drawn to network devices sharing memory, classified in class 709, subclass 213.

The inventions are distinct, each from the other because:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of Group II has separate utility such as for downloading/distributing/routing programs/kernels etc.

to processing devices, memory devices or network devices. See MPEP § 806.05(d).

Inventions of Group I and II are disclosed as different combinations which are not connected in design, operation or effect. These combinations are independent if it can be shown that (1) they are not disclosed as capable of use together, (2) they have different modes or operation, (3) they have different functions, or (4) they have different effects. (MPEP 806.04, MPEP 808.01). In the instant case the combinations as claimed presently exhibit conditions (2), (3), and (4).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, election by original presentation as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, election by original presentation as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, election by original presentation as indicated is proper.

3. Since applicant has received an action on the merits for the originally presented invention, this invention has been **constructively elected by original presentation** for prosecution on the merits. Accordingly, claim 1-11 and 15-26 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and

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MPEP § 821.03. Furthermore, Applicant should consider MPEP 706.07(h)[R-2] which states:

Applicant cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e. applicant cannot switch inventions). See 37 CFR 1.145. Any newly submitted claims that are directed to an invention that is independent and distinct from the invention previously claimed will be **withdrawn from consideration and not entered**. See subsection VI. Below. An RCE is not the filing of a new application. Thus, the Office will not convert an RCE to a new application such as an application filed under 37 CFR 1.53(b) or a continued prosecution application CPA under 37 CFR 1.53(d).

In the instant case, in the RCE filed 04/25/2005, Applicant requested entry of claims present in an amendment filed 03/25/2005 drawn to two independent and distinct inventions discussed above in section 2.

In accordance with MPEP 706.07(h) [R-2], the claims of Group I should have been withdrawn and not entered. Therefore, Group I, claims 1-11 and 15-26, have been cancelled since this application is in condition for allowance except for the presence of the non-elected invention.

4. Claims 12-14 are allowable over the prior art of record.

Any response to this action should be mailed to:

Under Secretary of Commerce for Intellectual Property and Director
of the United States Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

or faxed to:

(571) 273-8300, (for Official communications intended for entry)

Or:

(571) 273-4208, (for Non-Official or draft communications, please label "Non-Official" or "DRAFT")

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack A. Lane whose telephone number is 571 272-4208. The examiner can normally be reached on Mon-Fri from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 571 272-4210.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571 272-2100


JACK A. LANE
PRIMARY EXAMINER